

CRIMINAL APPEAL No.161 OF 1993 (SJ)

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Against the judgment and order dated 31.5.93  
passed in Sessions Trial No.87 of 1979 by the  
IInd Additional Sessions Judge, Gopalganj.

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1. Dhruv Roy,
2. Sakir Mian,
3. Mahangu Mahto alias Mahangu Dhanuk,
4. Vikrama Mahto,
5. Vakil Main,
6. Manraj Mahto,
7. Bashishth Manjhi,
8. Idrish Mian,
9. Insan Mian

... .. Appellants

Versus

The State of Bihar

... .. Respondent

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For the appellants : Mr. Y. V. Giri, Sr. Advocate  
With M/s Vikash Ratan Bharti &  
Ashish Giri, Advocates

For the State : Mr. Jay Shanker Pd. Singh, APP

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**P R E S E N T**

HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM

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S.M.M.Alam, J. This Cr. Appeal has been preferred against  
the judgment and order dated 31.5.1993 passed in  
Sessions Trial No. 87 of 1979 by the IInd Additional  
Sessions Judge, Gopgalganj, whereby he has been  
pleased to convict all the appellants under section  
148, 323 and 365 of the Indian Penal Code (except  
accused Peer Mohammad alias Peer Main, who was  
appellant no.8 but now he is dead who had been  
released on probation under section 360 of the Code of  
Criminal Procedure).The appellants were sentenced to  
undergo rigorous imprisonment for two and half years

under section 365 of the Indian Penal Code, rigorous imprisonment for two years under section 148 of the Indian Penal Code and rigorous imprisonment for one year under section 323 of the Indian Penal Code. Initially, there were altogether twelve appellants in this appeal but during pendency of appeal, appellant no.7 Dhodha Ram, appellant no.8 Peer Mohammand @ Peer Mian and appellant no.9 Anirudh Roy died and their names were struck off from the memo of appeal and, so, at present there are only nine appellants.

2. The prosecution case as per the written complaint lodged by the complainant Sonamati Devi with the Gopalganj Police Station on 17.4.76 at 11.30 P.M., in brief, is that one Ramagaya Rai (P.W.4), who happens to be her Bhaisur, came out of the house after taking meal and when he was at the Darwaza of the house, suddenly all the accused persons, namely, 1.Dhrub Rai, 2. Anirudh Rai, 3.Jag Dhanukh Rai, 4.Mahangu Dhanuk, 5. Bashisth Dusadh, 6. Kanchan Dhobi, 7.Vakil Darzee, 8. Rajjak Malhori, 9. Chhatu Gond, 10. Janki Sah, 11. Prabhu Tiwari, 12. Nathuni Tiwari, 13. Badhshah Rai and several others came there and caught hold of her Bhaisur. They took away Ramagaya Rai with them and while they were carrying him they were assaulting the said Ramagya Rai. One Kesar Rai tried to rescue him but he was also assaulted with lathi. The above named persons were armed with lathi, Bhala, Gandasa and gun. The above occurrence which had taken place at 9.00 P.M. was witnessed by Keshav Rai,

Dudhnath Rai, Viresh Rai, Krishna Nath Rai and others. On the basis of the above mentioned written complaint of Sonamati Devi, Gopalganj P.S. case no.16 dated 17.4.76 under sections 147, 148, 364 of the Indian Penal Code was instituted. Thereafter, the police started investigation and submitted charge sheet against fifteen persons out of whom one Jagdhanuk died during the trial and one Kifayat Mian was acquitted.

3. From perusal of the record, it appears that the judgment of the trial court is based mainly upon the evidence of P.W.4 Ramagaya Rai and P.W.7 Sonamati Devi. The rest witnesses are either formal witnesses or have not supported the prosecution case. P.W.4 Ramagaya Rai is the injured, whereas, P.W.7 Sonamati Devi is the informant of this case. Admittedly, they are close relatives as the FIR itself discloses that the injured Ramagaya Rai is the Bhai-sur of the informant.

4. Submission of learned advocate of the appellants is that if the evidence of P.W.4 and 7 is kept aside then there remains no material for coming to the conclusion that the prosecution has been able to prove its case. Learned advocate further submitted that apart from the above fact, there is no independent witness in this case and even the I.O. and the doctor have not been examined by the prosecution. Learned advocate further submitted that even the injury report was not brought on record from which any

opinion could be formed that the injuries which were found by the doctor on the person of Ramagaya Rai were actually caused due to assault. It was further submitted that the trial court had noticed this fact and that is why the trial court was of the opinion that in absence of examination of doctor charge under sections 325,326,307 of the Indian Penal Code could not be proved against the appellants. Learned advocate further submitted that the trial court has come to an erroneous finding that the appellants can be convicted for the lesser offence even though the charge under the grievous offence could not be established.

5. From perusal of the record, it appears that although the appellants were charged for the offence under sections 325,326,307 of the Indian Penal Code but to support the charge and to prove the nature of injury the examination of the Medical Officer, who had examined the injured, was very much essential. The trial court in its judgment has not given any reason as to why the Medical Officer could not be examined and why the injury report of the injured could not be brought on record by proving the same from a formal witness. Non-production of the injury report of P.W.4 by the prosecution establishes that the prosecution has intentionally withheld the injury report and did not examine the doctor. In such circumstances, I am of the view that the non-examination of the doctor and non-production of the injury report cuts the very root of the prosecution case that actually on the alleged

date of occurrence P.W.4 had sustained any injury on his person and, so, in absence of medical evidence the conviction of the appellants cannot be sustained.

6. It has further been argued by the learned advocate of the appellants that the evidence has come on record that the injured was found lying by the side of the road and there was possibility that the injured might have received injuries due to some accident and taking advantage of the accident the informant and injured, who was on inimical terms with the accused persons, have falsely implicated the appellants and, therefore, due to non-examination of the I.O. the appellants were highly prejudiced. I am of the opinion that the argument of the learned advocate seems to be somewhat correct in view of the fact that some of the witnesses specially P.W.7 in her cross-examination at para 3 has stated that when she was returning back she found Ramagaya Rai lying on road towards west of her house. This evidence shows that there is possibility that Ramagaya Rai had met with an accident and taking advantage of the injuries the informant might have falsely implicated the appellants. Under the circumstances, mentioned above, I am of the opinion that there is paucity of evidence in this case and in absence of independent witnesses and also in absence of examination of the doctor and I.O., it can not be held that the prosecution could be able to prove the case beyond all reasonable doubt. In such view of the

matter, I am of the view that the appellants deserve benefit of doubt.

7. Accordingly, this Cr. Appeal is allowed and the order of conviction dated 31.5.1993 and sentences passed against the appellants are set aside. The appellants are acquitted of the charge under sections 148, 323 and 365 of the Indian Penal Code after giving them benefit of doubt. The appellants are on bail and, as such, they are ordered to be discharged from the liabilities of their bail bonds.

8. In the result, this Cr. Appeal is allowed.

(Syed Md. Mahfooz Alam, J.)

